

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal form Order No. 22 of 2004

New India Assurance Company Ltd.
Haldwani

..... **Appellant**

Versus

Smt. Nirmala Devi and others.

..... **Respondents.**

Mr. M.K. Goyal, learned counsel for the appellant.

Mr. Amit Bhatt, learned counsel for the respondents No. 1 to 4.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.**

This appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act***) against the judgment and Award, dated 8-2-1994, passed in M.A.C.T. No. 442 of 1989, Smt. Nirmala Devi and others Vs. Sri Mangat Ram and others, by the Motor Accident Claims Tribunal/IV Additional District Judge, Nainital, Camp Haldwani, (**hereinafter referred to as the Tribunal**), whereby the learned Tribunal has awarded a sum of Rs. 2,00,000/- in favour of the claimants as against the Opposite Party No. 2- appellant. Aggrieved, the Insurance Company has come up in appeal before this Court with a prayer to set aside the impugned judgment and award mainly on the ground of its limited liability, quantum of compensation and has challenged the finding of the Tribunal on the point of negligence.

It has been vehemently submitted by the learned counsel for the appellant, Sri M.K. Goyal, that the Insurance Company is liable to pay the amount of compensation to the extent of Rs. 1,50,000/- i.e. the statutory limit; that the finding on the point

of negligence has not been arrived at by the learned Tribunal on the basis of evidence on Record and that the quantum of compensation is excessive.

In view of the grounds taken by the appellant-Insurance Company and the submissions made by the learned counsel, we do not find it expedient to go into the details of the case.

A motor accident took place on 3.6.89 involving Tempo No. U.G.P.-4907 which was driven rashly and negligently by its driver, with the result the deceased Gopal krishna Suri, who was pillion rider on a scooter sustained grievous injuries and succumbed to his injuries. He was aged 41 years and earning about Rs. 25,000/- per annum. Hence, claim petition has been preferred by his dependents/legal heirs for compensation. The Opposite parties contested the claim petition and filed their written statement on different grounds. Learned Tribunal framed necessary issues in the case. After considering the entire material on record, it has been held that the accident in question was caused due to rash and negligent driving by the driver of the offending Tempo resulting into injuries and consequent death of the deceased. The learned Tribunal has also held that there was no contributory negligence on the part of driver of the alleged scooter and there was no need to implead the owner or insurer of the said scooter. The learned Tribunal has ultimately found that amount of Rs. 2,00,000/- was the just amount of compensation in the present case.

Since the grounds have been taken on the points mentioned above and submissions have been made regarding extent of liability of the Insurance Company, it is now well settled law that ground of negligence or contributory negligence and questioning the quantum of award is not all open to the Insurance Company in the present case. The grounds for defence available to the

Insurance Company are enumerated in Section 149(2) of the Act. We are supported in our view by the Apex Court judgment in the Case of **"National Insurance Company Ltd. Vs. Nicolledda Rohtagi and others"** [(2002) 7 S.C.C. 456]. In that case, it has been observed by the Apex Court that **"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle"**. Thus, in view of the law laid down by the Apex Court reported in (2002) 7 S.C.C. 456) (*supra*), which is fully applicable in the present appeal, the contentions raised by the appellant are not at all tenable.

It was next submitted on behalf of the appellant that the liability of the Insurance Company is limited as provided by Section 95(2) of the Motor Vehicles Act, 1939. On the date of accident, it was Rs. 1,50,000/-. The accident in question occurred on 3.6.1989. The 1988 Act came into force on 1st July, 1989, therefore, the provisions of the 1988 Act could not be applicable to the present case.

The matter relating to liability of insurer in the respect of third-party risk came before the Hon'ble Apex Court in the case of **"National Insurance Co. Ltd. vs Keshav Bahadur and others"** [2004) 2 Supreme Court Case, 370]. In that case, it has been held by the Apex Court that **"the liability of the insurer limited as indicated in Section 95 of the Act. But it is open to the insured to make payment of additional higher premium and for the insurer to accept higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, and proof of payment of additional premium, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability."** It has also been observed by

the Apex Court that *"even if a vehicle is the subject-matter of comprehensive insurance and a higher premium is paid on that score, limits of the liability with regard to third-party risk do not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard"*.

In the present case, from a perusal of the impugned judgment and award, it appears that the O.P.- appellant has not produced any document to show that the Insurance Company was liable to limited extent. From the record, it is evident that the vehicle of the opposite party no. 1 was the subject-matter of comprehensive insurance, therefore, the facts of the present case are squarely covered by the law laid down in the case of ***keshav Bahadur and others (supra)***. We are also of the view that the liability of Insurance Company is limited under Section 95 of the 1939 Act, unless the insured makes payment of additional higher premium. The Tribunal has, however, considered this matter while recording a finding on Issue No. 3 and has dealt with the contentions raised on behalf of the appellant-Insurance Company, but in view of the aforesaid verdict of the Apex Court, we are unable to agree with the view taken by the Tribunal. The findings of the learned Tribunal that the Insurance Company is liable to pay entire amount of compensation deserve to be modified. However, in the circumstances of the present case, the appellant is directed to first satisfy the entire amount under the impugned award before the Tribunal and it will be open to the appellant-insurance company to file objections for apportionment of the compensation amount to its statutory liability and to recover the excess amount from the insured. The learned Tribunal shall afford opportunity of hearing to the insured-owner of the vehicle in question (respondent)

(no.6) and shall then decide the objections of the appellant, if so raised by the Insurance Company.

On the other hand, in this appeal, we find that under the provisions of Order 41, Rule 22 of the C.P.C. the claimant-respondents have also taken plea by filing cross objections that the amount of compensation as determined by the learned Tribunal is not based on the evidence on record and that the multiplier of 30 should have been used in the present case. This contention of the claimant-respondents too is not tenable. From the record, we find that the aged of the deceased Satish Chandra Agrawal has been stated to be 41 in the claim petition. Paper No. 40-C is a document relating to income tax assessment. We have considered this document and it can safely be held that the income of the deceased the documents of income-tax returns filed by the deceased to determine the income of the deceased. The Tribunal has deducted 1/3rd of Rs. 20,000/- towards personal expenses and loss of dependency has been worked out at Rs. 13,500/- per annum. For determination of just amount of compensation, the Tribunal has applied multiplier of **14** in the present case and thereby determined loss of dependency at Rs. 1,89,000/-. In addition to it. Sum of Rs.11,000/- has been awarded in lump sum towards loss of consortium, etc. Thus total amount of compensation worth Rs. 2,00,000/- along with interest @ 9% per annum from the date of claim petition has been awarded by the Tribunal. The Apex Court has held in the case of "***U.P. State Road Transport Corporation and others V. Trilok Chandra and others***" [(1996) 4 Supreme Court Cases, 362] **that the multiplier can be up to 18 and not 16 as was held in Susamma Thomas Case.** No infirmity or illegality has been committed by the Tribunal. The claim petition has been filed in the year 1989 and the claimant-respondent would also get hand-sum amount by way of 9% per annum interest. Taking into consideration the entire material on this score, we are unable to take

a different view. In our view, amount of Rs. 2,00,000/- along with interest as aforesaid is the just compensation to meet the ends of justice, therefore, the finding of the learned Tribunal does not call for any interference. The cross-objections filed by the claimant-respondents are liable to be dismissed and are dismissed accordingly.

With the aforesaid observations, the appeal is disposed to finally. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

24-08-2004
RCP

(B.S. Verma, J.)

(P.C. Verma, J)